

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE CARRASCO,

:

Plaintiff,

: REPORT AND RECOMMENDATION

-v.-

: 08 Civ. 10439 (VM)(GWG)

:

DETECTIVE MORALES et al.,

Defendants.

:

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GABRIEL W. GORENSTEIN, United States Magistrate Judge.

The complaint in this matter was filed on December 3, 2008.¹ As of July 20, 2009, no return of service had been filed with the Court as to any of the defendants. Accordingly, the Court issued an Order on that date informing plaintiff that he was required either to serve the summons and complaint on or before August 19, 2009, or to seek an extension of this deadline by showing good cause for his failure to effectuate service. This Order specifically informed the plaintiff that his case could be dismissed if he failed to comply with these directives.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The 120-day period permitted under Rule 4(m) has expired. To date, there has been no proof of service filed with respect to any of the defendants in this matter. Nor has there been an application for an extension of time that shows good cause for such failure. In addition, the Court's clerk has learned from the Marshal's Service that it has received no request from plaintiff to effectuate service.

For these reasons, and because this is not a case in which the Court should exercise its discretion to grant an extension in the absence of good cause, see Zapata v. City of New York, 502 F.3d 192 (2d Cir. 2007), this matter should be dismissed without prejudice pursuant to Rule


¹ An Amended Complaint was filed on May 1, 2009, but was later stricken.

4(m).

**PROCEDURE FOR FILING OBJECTIONS TO THIS
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have ten (10) days from service of this Report to file any objections. See also Fed. R. Civ. P. 6(a), (e). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Honorable Barbara S. Jones, 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Jones. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985).

Dated: September 10, 2009
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge

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